

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

INNER HYLEBOS, UPPER HYLEBOS,
TAYLOR WAY, AND EAST-WEST ROAD
PROPERTIES OF THE
COMMENCEMENT BAY NEARSHORE/TIDEFLATS
SUPERFUND SITE

PORT OF TACOMA,

RESPONDENT

Proceeding Under Sections 104 and 106(a)
of the Comprehensive Environmental
Response, Compensation, and Liability
Act, 42 U.S.C §§ 9604(a) and 9606(a)

U.S. EPA Docket No.
1092-06-01-104/106

ADMINISTRATIVE ORDER ON CONSENT FOR CERTAIN OF THE
PROPERTIES TO BE TRANSFERRED UNDER THE
PUYALLUP TRIBE OF INDIANS SETTLEMENT ACT OF 1989

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3 I. INTRODUCTION

4 1. This Administrative Order on Consent ("the Agreement") is
5 issued by the United States Environmental Protection Agency ("EPA")
6 to the Port of Tacoma ("the Port") pursuant to Sections 104 and
7 106(a) of the Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980 ("CERCLA") 42 U.S.C. §§ 9604(a) and
9 9606(a), as amended, regarding the transfer of the Inner Hylebos,
10 Upper Hylebos, Taylor Way, and East-West Road Properties within the
11 Commencement Bay Nearshore/Tideflats Superfund Site ("CB/NT Site").

12 II. JURISDICTION

13 2. This Agreement is issued pursuant to the authority
14 conferred on the President of the United States by Sections 104 and
15 106(a) of CERCLA, 42 U.S.C. §§ 9604 and 9606(a), as amended. The
16 authority for Section 106(a) was delegated to the Administrator of
17 the EPA by the Executive Agreement 12316, dated August 14, 1981, 46
18 Fed. Reg. 42237; the authority for Section 104 was delegated to the
19 Administrator by Executive Order 12580, dated January 23, 1987, 52
20 Fed. Reg. 2926. These authorities were further delegated to the
21 EPA Regional Administrators and the EPA Assistant Administrator for
22 Solid Waste and Emergency Response by the EPA Delegations Manual
23 Sections 14-14, 14-14-A, 14-14-B, and 14-14-C. These authorities
24 are conferred on the EPA, Region 10, Chief, Superfund Branch, by
25 Regional Order 1290.33, signed by the Regional Administrator on
26 September 27, 1990.

1 3. On August 27, 1988, the Puyallup Land Settlement Agreement
2 ("Settlement Agreement") was signed. The United States, the
3 Puyallup Tribe of Indians ("the Tribe"), the State of Washington,
4 and the Port are among the parties to the Settlement Agreement.
5 The Settlement Agreement provides that the Port will transfer
6 certain properties to the Tribe and will perform cleanup actions,
7 as necessary, in order to assure that such properties comply with
8 applicable federal and state contamination law and can be used for
9 commercial and industrial purposes.

10 4. Pursuant to the Puyallup Tribe of Indians Settlement Act of
11 1989, 25 U.S.C. § 1773b ("the Settlement Act"), the Port agreed,
12 subject to certain conditions, to transfer to the United States in
13 trust for the Tribe six parcels of property ("the Settlement
14 Properties"), including the Inner Hylebos, Upper Hylebos, East-West
15 Road and Taylor Way Properties ("the Settlement Properties subject
16 to this Agreement"). The Settlement Act provides that the transfer
17 of Settlement Properties is to be carried out in accordance with
18 the Settlement Agreement. Under the Settlement Act, the Tribe is
19 not to be liable for the cleanup costs or in any other manner for
20 contamination on Settlement Properties except any contamination
21 caused by the Tribe's activities after conveyance of the Settlement
22 Properties to the Tribe. 25 U.S.C. § 1773b(b)(2). To implement
23 the Settlement Act's provisions regarding compliance with
24 applicable federal and state law, EPA, the Washington State
25 Department of Ecology ("Ecology"), the Tribe, and the Port entered

1 into a Memorandum of Agreement ("MOA") on March 21, 1990. The MOA
2 provides, in part, that implementation of the cleanup activities
3 under the Settlement Agreement will occur under EPA and Ecology
4 oversight, and that EPA will oversee implementation of approved
5 cleanup plans under CERCLA enforcement authorities.

6 III. PARTIES BOUND

7 5. This Agreement shall apply to and be binding upon EPA, the
8 Port and the Port's agents, successors, assigns, officers,
9 directors, and principals.

10 IV. DEFINITIONS

11 6. Unless otherwise expressly provided herein, terms used in
12 this Agreement which are defined in CERCLA or in regulations
13 promulgated under CERCLA shall have the meaning assigned to them in
14 CERCLA or in such regulations. Whenever terms listed below are
15 used in this Agreement, the following definitions shall apply:

16 "Commencement Bay Nearshore/Tideflats Superfund Site"
17 ("CB/NT Site") means the entire Commencement Bay
18 Nearshore/Tideflats Superfund Site, which is located in Tacoma,
19 Washington and is described in the Record of Decision, issued
20 September 30, 1989.

21 "Contractor" or "Subcontractor" means the company or
22 companies retained by or on behalf of the Port to undertake and
23 accomplish the work and associated activities addressed in this
24 Agreement.

1 "Ecology" means the Washington State Department of
2 Ecology.

3 "Historic Contamination" means any contamination that
4 remains on, in, under or about any of the Settlement Properties as
5 of the date that title to such property is conveyed to the United
6 States in trust for the Tribe.

7 "Implementing Agreement" means that written agreement and
8 all addenda and exhibits incorporated therein by the Port and the
9 Tribe to implement the transfer of Settlement Properties, included
10 as Appendix 1 to this Agreement. The Implementing Agreement was
11 approved by the Tribal Council of the Puyallup Tribe on February
12 27, 1992, and subsequently approved by the Commissioners of the
13 Port of Tacoma on March 5, 1992.

14 "Institutional Controls" means land use restrictions and
15 other regulations, ordinances, covenants, and controls developed
16 pursuant to the Settlement Agreement, the MOA, the Implementing
17 Agreement, or this Agreement to restrict uses of the Settlement
18 Properties as necessary to maintain the integrity, to prevent the
19 unauthorized disturbance of any cleanup actions, measures, or
20 structures implemented at the Settlement Properties, and to govern
21 the performance of any future activities at the Settlement
22 Properties.

23 "Memorandum of Agreement" or "MOA" means the agreement
24 entered into by the Port, EPA, the Tribe, and Ecology, dated March
25 21, 1990, included as Appendix 2 to this Agreement.

1 "National Contingency Plan" or "NCP" shall mean the
2 National Oil and Hazardous Substances Pollution Contingency Plan
3 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
4 codified at 40 C.F.R. Part 300, including, but not limited to, any
5 amendments thereto.

6 "Paragraph" means a portion of this Agreement identified
7 by an arabic numeral or an upper case letter.

8 "Puyallup Tribe of Indians" or "the Puyallup Tribe" or
9 "the Tribe" shall mean the Puyallup Tribe of Indians, a federally
10 recognized Indian tribe. For the purposes of this Agreement, the
11 Tribe shall be a Consulted Agency.

12 "Record of Decision" or "ROD" means the Record of
13 Decision issued by EPA on September 30, 1989, and any amendments
14 thereto, concerning Operable Units 1 and 5 of the CB/NT Site.

15 "Remedial Action" means those activities to be undertaken
16 by the Port to implement the CB/NT Record of Decision at the
17 Settlement Properties.

18 "Section" means a portion of this Agreement identified by
19 a Roman numeral.

20 "Settlement Properties" means the six (6) properties
21 identified by the Settlement Act to be transferred to the Tribe.
22 The Settlement Properties include:

- 23 (1) The Blair Waterway Property.
- 24 (2) The Blair Backup Property.
- 25 (3) The Inner Hylebos Property.

1 (4) The Upper Hylebos Property.

2 (5) The Taylor Way Property.

3 (6) The East-West Road Property.

4 "Settlement Properties subject to this Agreement" means
5 the following Settlement Properties:

6 (1) The Inner Hylebos Property.

7 (2) The Upper Hylebos Property.

8 (3) The Taylor Way Property.

9 (4) The East-West Road Property.

10 V. STATEMENT OF PURPOSE

11 7. In entering into this Agreement, the objectives of the
12 parties are: (a) to protect the public health and welfare and the
13 environment by implementing response actions for the Settlement
14 Properties subject to this Agreement, consistent with the
15 Settlement Act, the Settlement Agreement, and the Record of
16 Decision for the CB/NT Site; and (b) to facilitate implementation
17 of the Settlement Agreement.

18 8. The Port acknowledges that notwithstanding the transfer of
19 the Settlement Properties subject to this Agreement to the United
20 States in trust for the Tribe, the Port shall remain responsible
21 for the future cleanup and/or remediation of any Historic
22 Contamination to the extent provided in the Settlement Agreement
23 and the Implementing Agreement.

24 9. The Port and the Tribe have executed an Implementing
25 Agreement for the purpose of setting forth the manner and

1 conditions for the conveyance of the Settlement Properties to the
2 Tribe. The Implementing Agreement is attached as Appendix 1 to
3 this Agreement.

4 10. The Port agrees to undertake all actions required by the
5 terms and conditions of this Agreement. In any action by the EPA
6 or the United States to enforce the terms of this Agreement, the
7 Port consents to and agrees not to contest the authority or
8 jurisdiction of the Regional Administrator to enter into or enforce
9 this Agreement, and agrees not to contest the validity of this
10 Agreement or its terms.

11 VI. FINDINGS OF FACT

12 11. The Inner Hylebos Property, Upper Hylebos Property, Taylor
13 Way Property, and East-West Road Property, the Settlement
14 Properties subject to this Agreement, are located within the
15 boundaries of the Commencement Bay Nearshore/Tideflats Superfund
16 Site. The CB/NT Site is located in Tacoma, Washington, at the
17 southern end of the main basin of Puget Sound. The CB/NT Site
18 includes, along with other land and marine features, 10-12 square
19 miles of shallow water, shoreline, and adjacent land in the
20 industrial tideflats area of an active commercial seaport.

21 12. The Port is the owner of the Inner Hylebos, Upper Hylebos,
22 Taylor Way, and East-West Road Properties.

23 13. The Port has agreed with the Tribe to transfer the Inner
24 Hylebos, Upper Hylebos, Taylor Way, and East-West Road Properties
25 to the Tribe pursuant to the Settlement Agreement. Two other

1 properties, the Blair Waterway Property and the Blair Backup
2 Property, are also to be transferred to the Tribe under the
3 Settlement Agreement at a later date. The Settlement Agreement
4 contemplates that title to these lands owned by the Port will be
5 conveyed to the United States in trust for the Tribe by March,
6 1993.

7 14. The Settlement Agreement provides that the Port will
8 perform cleanup actions on property to be transferred from the Port
9 to the Tribe in order to assure that such property complies with
10 applicable federal and state contamination law and can be used for
11 commercial and industrial purposes.

12 15. The Settlement Agreement has been incorporated into federal
13 law, the Puyallup Tribe of Indians Settlement Act of 1989 (P.L.
14 101-41, 25 U.S.C. 1773), and state law, the Puyallup Tribal Claims
15 Settlement (Ch. 4, Laws of 1989 1st Ex. Sess.).

16 16. The Port has entered into a MOA with EPA, the Tribe, and
17 Ecology regarding the implementation of the Settlement Agreement.
18 The MOA, which became effective on March 21, 1990, is attached to
19 this Agreement as Appendix 2. Among other things, the MOA provides
20 for the parties to review and comment on (A) investigations of
21 contamination, (B) analyses of cleanup alternatives, and (C)
22 cleanup plans that are completed by the Port for each property to
23 be transferred to the Tribe under the Settlement Agreement. The
24 MOA further provides that EPA will oversee implementation of
25 approved cleanup plans under CERCLA enforcement authorities, and

1 that full and timely compliance with each and every enforcement
2 action issued by EPA pursuant to the MOA is contemplated by the
3 parties to the MOA.

4 17. The environmental investigations at each of the Settlement
5 Properties subject to this Agreement followed the steps outlined in
6 the MOA, as follows:

7 a. Results of an environmental audit are summarized in a
8 Phase I Environmental Investigation Report.

9 b. Based on the results of the Phase I report, a Phase II
10 Environmental Investigation Sampling and Analysis Plan ("Work
11 Plan") was prepared to guide the environmental investigation and
12 evaluation at each property. The Work Plan was reviewed by EPA,
13 Ecology, and the Tribe, and modified in response to their comments.

14 c. In accordance with the Work Plan for each property,
15 preliminary site investigations and sampling were conducted from
16 December 1989 through March 1990. Data were evaluated and results
17 were summarized in a Preliminary Investigation Report. The Report
18 was reviewed by EPA, Ecology, and the Tribe, and modified in
19 response to their comments.

20 d. As determined necessary, the Port prepared additional
21 Sampling and Analysis Plans to complete environmental
22 investigations. The additional exploration and sampling were
23 accomplished through July 1991. Additional investigation results
24 were presented in a Draft Final Investigation Report, which was
25 reviewed by EPA, Ecology, and the Tribe, and modified in response
26 to their comments.

27 e. A Final Investigation Report presented all investigation
28 data gathered at the property; an evaluation of site conditions
accomplished by comparing soil, sediment, and water quality data to
federal and state environmental criteria and regulations; a summary
of any cleanup actions completed at the property; and
recommendations for any necessary cleanup actions at the property.

18. Inner Hylebos Property. The Inner Hylebos Property is
located along the northern shore of the Hylebos Waterway in the
vicinity of the intersection of Marine View Drive and East 11th
Street in Tacoma, Washington. The property is about 73 acres in

1 size, approximately 60 acres of which is submerged at high tide.
2 The Inner Hylebos Property is located within the Mouth of Hylebos
3 Problem Area in the CB/NT Site. As defined in the remedy selected
4 in the CB/NT ROD, sediment problems in the Mouth of Hylebos Problem
5 Area must be corrected through a combination of source control,
6 natural recovery, and active sediment remediation. In the ROD,
7 sediments within the boundaries of the Inner Hylebos Property were
8 predicted to recover naturally. As defined in the ROD, natural
9 recovery may be the remedial action in marginally contaminated
10 areas where recovery is expected to occur within a 10-year period
11 following source control.

12 a. Documents. The following reports pertain to the Inner
13 Hylebos Property:

14 i. Phase I Environmental Investigation Report. Prepared
15 by Landau Associates for the Port of Tacoma, dated July 11, 1989.

16 ii. Work Plan for Phase II Environmental Investigations
17 at the Port of Tacoma Property Transfers: Blair Waterway Property,
18 Inner Hylebos Property, and Upper Hylebos Property. Prepared by
19 Landau Associates for the Port of Tacoma, dated December 4, 1989.

20 iii. Final Investigation Report for the Inner Hylebos
21 Property. Prepared by Landau Associates for the Port of Tacoma,
22 dated February 28, 1992. Data are presented in "Appendix D,
23 Volumes I and II, Data Quality Assurance, Final Investigation
24 Report for Blair Waterway, Inner Hylebos, and Upper Hylebos
25 Properties, Tacoma, Washington, January 15, 1991 (amended July 5,
26 1991)", which is bound separately from the Final Investigation
27 Report.

28 iv. Completion Report for the Auto Refuse Removal at the
Inner Hylebos Property. Prepared by Landau Associates for the Port
of Tacoma, dated May 31, 1991.

v. Completion Report for the Peninsula Oily Soil/Sawdust
Removal at the Inner Hylebos Property. Prepared by Landau
Associates for the Port of Tacoma, dated February 7, 1992.

1 vi. Commencement Bay Nearshore/Tideflats Remedial
Investigation. Prepared by Tetra Tech for EPA, dated August, 1985.

2 vii. Commencement Bay Nearshore/Tideflats Feasibility
3 Study. Prepared by Tetra Tech for EPA, dated December, 1988.

4 viii. Commencement Bay Nearshore/Tideflats Record of
Decision. EPA, dated September 30, 1989.

5 ix. EPA's memorandum entitled "Additional Marine
6 Sediment Issues at the Inner Hylebos Property," Karen Keeley, dated
March 19, 1991.

7 b. Upland Investigations and Cleanup. Investigations of
8 contamination at the Inner Hylebos Property found two separate
9 areas containing auto refuse material (the Southwest Auto Refuse
10 Area and the Northeast Auto Refuse Area), and one area containing
11 oily soil and flattened, crushed 50-gallon drums (the Peninsula
12 Area). These contaminated areas were cleaned up pursuant to an
13 administrative order issued by the EPA to the Port of Tacoma on
14 February 14, 1991 (U.S. EPA Docket No. 1091-02-14-106). Completion
15 Reports for the Auto Refuse Area Removal and for the Peninsula Area
16 Removal were approved by EPA, Ecology, and the Tribe. On February
17 14, 1992, EPA, with the concurrence of Ecology and the Tribe,
18 agreed that the Port satisfactorily met the requirements of the
19 Administrative Order. Based on the results presented in the Final
20 Investigation Report, EPA, Ecology, and the Tribe agreed that no
21 further cleanup actions are required at the upland portions of the
22 property.

23 c. Upland Institutional Controls. EPA, Ecology, and the
24 Tribe agreed with the Port's recommendation that no further cleanup
25

1 was required at the upland portion of the property, with the
2 condition that the following institutional controls be implemented:

3 i. Subject to Paragraph C12f of the Settlement Agreement
4 Technical Document 1, future use of the Inner Hylebos Property will
5 be for fisheries, commercial and industrial purposes.

6 ii. The use of shallow groundwater for drinking water
7 purposes is prohibited.

8 iii. EPA, Ecology, and the Tribe agreed with the Port's
9 recommendation that no further cleanup was necessary to address
10 residual TPH-contaminated soils in the northern portion of the
11 peninsula at the Inner Hylebos Property with the following
12 precautions:

13 (1) A conditional point of compliance in soils is
14 established in the Project Area, which has been surveyed and is
15 defined in Figures 3 and 4 of the Peninsula Completion Report dated
16 February 7, 1992. The conditional point of compliance is
17 established for total petroleum hydrocarbons ("TPH") at 3 feet
18 below the ground surface in the Project Area. Material containing
19 TPH at concentrations greater than 200 ppm may remain at depths
20 greater than 3 feet. The 200 ppm TPH concentration is the cleanup
21 level that was established in the Order based on cleanup levels set
22 forth in the State of Washington's Model Toxics Control Act
23 regulations.

24 (2) Any activity within the Project Area that may result
25 in the uncontrolled release of soil containing greater than 200 ppm
26 TPH is prohibited.

27 (3) Workers involved in development or construction
28 activities within the Project Area below a depth of 3 feet
including, but not limited to, grading, foundation construction,
placement of utilities, and building construction shall observe
health and safety procedures as appropriate during construction to
minimize dust inhalation and dermal contact with the soil
containing residual oil.

(4) Soil and water generated during development or
construction activities within the Project Area below a depth of 3
feet shall be handled and disposed in accordance with applicable
regulations.

d. Marine Sediment Investigations. Sediment data collected
by the Port and reported in the Final Investigation Report showed

1 chemical concentrations in sediment in excess of certain numerical
2 criteria at the Inner Hylebos Property. The sediment data are
3 consistent with the prediction in the CB/NT ROD that sediments
4 would naturally recover in the area of the Inner Hylebos Property.
5 The strategy set forth in the ROD identified long-term and short-
6 term sediment cleanup objectives. Sediments contaminated with
7 chemicals at concentrations between the long-term and short-term
8 cleanup objectives are predicted to recover naturally.

9 i. Hazardous substances. As presented in the Port's
10 Final Investigation Report, with one exception, chemical
11 concentrations in all surface sediment samples were below the CB/NT
12 short-term cleanup objectives. The single value that exceeded the
13 short-term cleanup objective was 70 ug/kg hexachlorobutadiene which
14 was found in the surface sample at Station 22. That concentration
15 exceeded the short-cleanup objective of 51 ug/kg
16 hexachlorobutadiene and the long-term cleanup objective of 11 ug/kg
17 hexachlorobutadiene. The following chemical concentrations in
18 surface sediment samples at one or more stations were below the
19 CB/NT short-term cleanup objectives but were greater than the long-
20 term cleanup objectives: arsenic, cadmium, copper, zinc,
21 hexachlorobenzene, hexachlorobutadiene, and polychlorinated
22 biphenyls ("PCBs"). Chemical concentrations in all subsurface
23 sediment samples were below the CB/NT long-term cleanup objectives.

24 ii. Health effects. The hazardous substances present in
25 marine sediments at the property are known or suspected to have the
26 potential to cause adverse environmental affects. Of particular
27 concern are:

28 (1) Arsenic, cadmium, copper, zinc, hexachlorobenzene,
and hexachlorobutadiene - These chemicals were found at
concentrations above the Apparent Effects Threshold ("AET") level,
which was used to establish the long-term cleanup objectives in the
CB/NT ROD. As described in the ROD, the AET was defined as the
contaminant concentration above which toxicity or benthic effects
are always observed; chemicals present in concentrations above this
threshold are likely contributors to observed biological effects in
the marine environment.

(2) PCBs - In the Remedial Investigation and
Feasibility Study (RI/FS) for the CB/NT Site, the baseline risk
assessments indicated that the most significant human health risks

1 are associated with elevated concentrations of PCBs in the tissues
2 of resident seafood. Information from the risk assessment was used
3 to establish a PCB cleanup level that would result in attainment of
4 fish PCB levels similar to those in Puget Sound reference areas.
5 Also, results of the CB/NT RI/FS showed strong linear relationships
6 between sediment toxicity and PCB concentrations in sediments in
7 the Hylebos Waterway. Animal and plant species and aquatic life in
8 the marine environment within and adjacent to the CB/NT Site
9 boundaries may be exposed to, and are at risk from, such hazardous
10 substances.

11 19. Upper Hylebos Property. The Upper Hylebos Property is
12 located along the northeastern shore of the head of Hylebos
13 Waterway along Marine View Drive in Tacoma, Washington. The
14 property is about 6 acres in size, and includes about 200 feet of
15 shoreline. The western boundary of the property extends about 100
16 feet offshore. The Upper Hylebos Property is located within the
17 Head of Hylebos Problem Area in the CB/NT Site. As identified in
18 the remedy selected in the CB/NT ROD, sediment problems in the Head
19 of Hylebos Problem Area must be corrected through a combination of
20 source control, natural recovery, and active sediment remediation.
21 According to the CB/NT ROD, sediments within the boundaries of the
22 Upper Hylebos Property were predicted to require active
23 remediation.

24 a. Documents. The following reports pertain to the Upper
25 Hylebos Property:

26 i. Phase I Environmental Investigation Report. Prepared
27 by Landau Associates for the Port of Tacoma, dated July 11, 1989.

28 ii. Work Plan for Phase II Environmental Investigations
at the Port of Tacoma Property Transfers: Blair Waterway Property,
Inner Hylebos Property, and Upper Hylebos Property. Prepared by
Landau Associates for the Port of Tacoma, dated December 4, 1989.

1 iii. Final Investigation Report for the Upper Hylebos
2 Property. Prepared by Landau Associates for the Port of Tacoma,
3 dated May 10, 1991. Data are presented in "Appendix D, Volumes I
4 and II, Data Quality Assurance, Final Investigation Report for
Blair Waterway, Inner Hylebos, and Upper Hylebos Properties,
Tacoma, Washington, January 15, 1991 (amended July 5, 1991)", which
is bound separately from the Final Investigation Report.

5 iv. Commencement Bay Nearshore/Tideflats Remedial
6 Investigation. Prepared by Tetra Tech for EPA, dated August, 1985.

7 v. Commencement Bay Nearshore/Tideflats Feasibility
8 Study. Prepared by Tetra Tech for EPA, dated December, 1988.

9 vi. Commencement Bay Nearshore/Tideflats Record of
Decision. EPA, dated September 30, 1989.

10 b. Upland Investigations. Based on the investigation results
11 presented in the Final Investigation Report, EPA, Ecology, and the
12 Tribe agreed that no further cleanup actions are required at the
13 upland portions of the property. The Final Investigation Report
14 supports these conclusions with a comparison of groundwater seep,
15 soil, and ditch sediment data to applicable federal and state
16 environmental requirements and criteria that indicate no cleanup
17 action is required on the upland portions of the property.

18 c. Upland Institutional Controls. EPA, Ecology, and the
19 Tribe agreed with the Port's recommendation that no further cleanup
20 was required with the upland portion of the property, with the
21 condition that the following institutional controls be implemented:

22 i. Subject to Paragraph C12f of the Settlement Agreement
23 Technical Document 1, future use of the Upper Hylebos Property will
24 be for commercial and industrial purposes.

25 ii. The use of shallow groundwater for drinking water
26 purposes is prohibited.

1 d. Marine Sediment Investigations. Sediment data collected
2 by the Port after completion of the ROD identified sediment
3 contamination at the Upper Hylebos Property which suggests that,
4 although the upland site is not a suspected ongoing source of
5 contamination, active sediment remediation would be required
6 because chemical concentrations exceed the CB/NT short-term cleanup
7 objectives.

8 i. Hazardous Substances. Chemical concentrations of
9 arsenic (range of 112 to 123 mg/kg) in three surface sediment
10 samples and PCBs (310 ug/kg) in a single surface sediment sample
11 exceeded the CB/NT short-term cleanup objectives of 97 mg/kg
12 arsenic and 240 ug/kg PCBs. Chemical concentrations of high
13 molecular weight polyaromatic hydrocarbons ("HPAH") at 66,523 ug/kg
14 in a single composite sediment sample collected at 0-30 cm exceeded
the CB/NT short-term cleanup objective of 32,000 ug/kg. Chemical
concentrations of zinc, phenol, and dimethylphthalate in surface
sediment samples from one or more sample locations exceed the CB/NT
long-term cleanup objectives. Short-term cleanup objectives have
not yet been developed for these chemicals.

15 ii. Adverse Effects. The hazardous substances present
16 in marine sediments at the Upper Hylebos Property are known or
suspected to have the potential to cause adverse environmental
affects. Of particular concern are:

17 (1) Arsenic and HPAH. These chemicals were found at
18 concentrations above the AET level, which was used to establish the
long-term cleanup objective. In the CB/NT ROD, the AET was defined
as the contaminant concentration above which toxicity or benthic
effects are always observed; chemicals present in concentrations
above this threshold are likely contributors to observed biological
effects in the marine environment.

21 (2) PCBs. In the CB/NT RI/FS, the baseline risk
22 assessments indicated that the most significant human health risks
are associated with elevated concentrations of PCBs in the tissues
of resident seafood. Information from the risk assessment was used
23 to define a PCB cleanup level that would result in attainment of
fish PCB levels similar to those in Puget Sound reference areas.
24 Also, results of the CB/NT RI/FS showed strong linear relationships
between sediment toxicity and PCB concentrations in sediments in
25 the Hylebos Waterway. Animal and plant species and aquatic life in
the marine environment within and adjacent to the CB/NT Site

1 boundaries may be exposed to, and are at risk from, such hazardous
2 substances. Human health risks include dermal contact and long
3 term human ingestion of fish, shellfish, or biota which have been
contaminated by exposure to unacceptable levels of these
constituents.

4 iii. Future Remedial Action. Based on the investigation
5 results presented in the Final Investigation Report, the marine
6 sediment data indicate that the sediments are at concentrations
7 greater than the threshold levels in the ROD. Contaminants, such
8 as arsenic, exceeded the CB/NT short-term cleanup objective in
9 surface (0-2 cm) sediments, and other contaminants, such as
10 semivolatile organic compounds, exceeded the Puget Sound Dredged
11 Disposal Analysis Maximum Level in subsurface (0-30 cm) sediments.
12 Data indicate that active sediment remediation would be required.
13 The Port and Tribe have agreed that sediment remedial action be
14 deferred until such activities are conducted concurrently with
CERCLA remedial activities required at the Head of Hylebos Problem
Area at the CB/NT Site. For such an action, the following
chemicals in surface sediments may need to be re-analyzed as part
of overall sediment remedial design activities for the Head of
Hylebos Problem Area because high detection limits prevented
comparison of results for these chemicals with respective long-term
sediment cleanup levels: DDT; DDD; DDE; 1,3-dichlorobenzene; 1,4-
dichlorobenzene; benzyl alcohol; benzoic acid; 1,2-dichlorobenzene;
2,4-dimethylphenol; 1,2,4-trichlorobenzene; hexachlorobutadiene; n-
nitrosodiphenylamine; hexachlorobenzene; and pentachlorophenol.

15 20. Taylor Way Property. The Taylor Way Property is located in
16 the vicinity of the intersection of Taylor Way and East-West Road
17 in Tacoma, Washington. The triangular-shaped property is about 6
18 acres in size and is relatively flat.

19 a. Documents. The following reports pertain to the Taylor
20 Way Property:

21 i. Phase I Environmental Audit, Taylor Way Properties,
22 Tacoma, Washington. Prepared by Hart Crowser for the Port of
Tacoma, dated July 12, 1989.

23 ii. Final Work Plan for the Phase II Environmental Audit
24 for the Blair Backup and Taylor Way Properties. Prepared by Hart
25 Crowser for the Port of Tacoma, dated December 4, 1989. Work Plan
26 Addendum for the Supplemental Phase II Site Investigation at the
Blair Backup and East-West Road Properties. Prepared by Hart
Crowser for the Port of Tacoma, dated July 27, 1990. Work Plan

1 Addendum for Groundwater Background and Formaldehyde Sampling,
2 Blair Backup, East-West Road, and Taylor Way Properties. Prepared
by Hart Crowser for the Port of Tacoma, dated January 4, 1991.

3 iii. Final Investigation Report, Taylor Way Property,
4 Port of Tacoma, Washington. Prepared by Hart Crowser for the Port
of Tacoma, dated October 15, 1991.

5 b. Investigations. Based on the investigation results
6 presented in the Final Investigation Report, EPA, Ecology, and the
7 Tribe agreed that no cleanup actions are required at the property.
8 The Final Investigation Report supports these conclusions with a
9 comparison of groundwater, surface water, soil, and ditch sediment
10 data to applicable federal and state environmental requirements and
11 criteria that indicate no cleanup action is required on the
12 property.

13 c. Institutional Controls. EPA, Ecology, and the Tribe
14 agreed with the Port's recommendation that no further cleanup was
15 required at the property, with the condition that the following
16 institutional controls be implemented:

17 i. Subject to Paragraph C12f of the Settlement Agreement
18 Technical Document 1, future use of the Taylor Way Property will be
for commercial and industrial purposes.

19 ii. The use of shallow groundwater for drinking water
20 purposes is prohibited.

21 21. East-West Road Property - The East-West Road Property is
22 located in the vicinity of the intersection of East-West Road and
23 Taylor Way in Tacoma, Washington. The triangular-shaped property
24 is about 1.8 acres in size and is relatively flat.

25 a. Documents. The following reports pertain to the East-West
26 Road Property:

1 i. Phase I Environmental Audit, Taylor Way Properties,
Tacoma, Washington. Prepared by Hart Crowser for the Port of
2 Tacoma, dated July 12, 1989.

3 ii. Final Work Plan for the Phase II Environmental Audit
for the Blair Backup and Taylor Way Properties. Prepared by Hart
4 Crowser for the Port of Tacoma, dated December 4, 1989. Work Plan
Addendum for the Supplemental Phase II Site Investigation at the
5 Blair Backup and East-West Road Properties. Prepared by Hart
Crowser for the Port of Tacoma, dated July 27, 1990. Work Plan
6 Addendum for Groundwater Background and Formaldehyde Sampling,
Blair Backup, East-West Road, and Taylor Way Properties. Prepared
7 by Hart Crowser for the Port of Tacoma, dated January 4, 1991.

8 iii. Final Investigation Report, East-West Road
Property, Port of Tacoma, Washington. Prepared by Hart Crowser for
9 the Port of Tacoma, dated August 27, 1991.

10 b. Investigations.

11 i. Soils. Based on the investigation results presented
in the Final Investigation Report, EPA, Ecology and the Tribe
12 agreed that no cleanup actions were required for upland soils at
the property. The Final Investigation Report supports these
13 conclusions with a comparison of soil data to applicable federal
and state environmental requirements and criteria that indicate no
14 cleanup action is required.

15 ii. Groundwater. EPA, Ecology, and the Tribe agreed
with the Port's recommendation that active groundwater remediation
16 at the property is not required at this time, although chemical
concentrations in groundwater exceed state and federal standards.
17 Groundwater contaminants include chlorinated volatile organic
compounds, such as vinyl chloride; cis-1,2-dichloroethene; trans-
18 1,2-dichloroethene; and trichloroethene. Results of the Final
Investigation Report indicate that the "Bonneville Power
19 Administration Occidental Sludge Site", a property adjacent to the
East-West Road Property, is the source of chlorinated organic
20 compounds to groundwater at the East-West Road Property.

21 c. Institutional Controls. Based on results of the Final
22 Investigation Report, which included an evaluation of the potential
23 adverse human health exposures, EPA, Ecology, and the Tribe agreed
24 with the Port's recommendation that no further cleanup was required

1 at the property, with the condition that the following
2 institutional controls be implemented:

3 i. Subject to Paragraph C12f of the Settlement Agreement
4 Technical Document 1, future use of the East-West Road Property
5 will be for commercial and industrial purposes.

6 ii. The use of groundwater at the property for any
7 purpose is prohibited to avoid potential exposure resulting from
8 contact with or ingestion of groundwater.

9 iii. Institutional controls shall minimize the potential
10 for future exposure to contaminated groundwater at the East-West
11 Road Property (see Port's letter to EPA dated November 2, 1991; see
12 Section 7 of Final Investigation Report):

13 (1) To protect against inhalation of volatile organic
14 compounds by future onsite workers, provide an integrally designed
15 soil gas protection system (e.g., vapor barrier, venting, gravel
16 drains, or other appropriate measures) if structures with gas-
17 permeable (e.g., wood) floors are built prior to groundwater
18 cleanup;

19 (2) Ensure future onsite workers observe health and
20 safety precautions as appropriate for worker protection during
21 ground-intrusive development or construction activities;

22 (3) During development or construction activities at
23 the East-West Road Property, ensure groundwater disposal planning
24 is performed with regard to potential dewatering activities during
25 construction.

26 VII. CONCLUSIONS OF LAW

27 22. The Inner Hylebos, Upper Hylebos, Taylor Way, and East-West
28 Road Properties are each a "facility" as defined in Section 101(9)
of CERCLA, 42 U.S.C. § 9601(9), as amended.

23 23. The Port is a "person" within the meaning of Section
24 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25 24. The Port is a "liable party" as defined in Section 107(a)
26 of CERCLA, 42 U.S.C. § 9607(a), and a potentially responsible party

1 within the meaning of Section 104(a) of CERCLA, 42 U.S.C.
2 § 9604(a).

3 25. The Port is a current owner of each of the Settlement
4 Properties subject to this Agreement within the meaning of Section
5 107(a) of CERCLA, 42 U.S.C. § 9607(a).

6 26. Substances and constituents thereof identified in the Final
7 Investigation Report for each of the Settlement Properties subject
8 to this Agreement are hazardous substances, pollutants or
9 contaminants, as defined in Sections 101(14) and 101(33)
10 respectively, of CERCLA, 42 U.S.C. § 9601(14) and § 9601(33).

11 27. The presence of hazardous substances at each of the
12 Settlement Properties subject to this Agreement, or the past,
13 present, or potential migration of hazardous substances at or
14 emanating from each of the Settlement Properties subject to this
15 Agreement constitute an actual and/or threatened release as defined
16 in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

17 28. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),
18 the presence of, and potential migration of hazardous substances,
19 pollutants, or contaminants at the Inner Hylebos and Upper Hylebos
20 Properties may present an imminent and substantial endangerment to
21 the public health or welfare or the environment because of an
22 actual or threatened release of such substances.

23 29. The presence of hazardous substances at each of the
24 Settlement Properties subject to this Agreement is the result of
25 Historic Contamination.

1 30. Under the Puyallup Tribe of Indians Settlement Act of 1989,
2 the Tribe is not to be liable for the cleanup costs or in any other
3 manner for contamination on Settlement Properties except any
4 contamination caused by the Tribe's activities after conveyance of
5 the Settlement Properties to the Tribe.

6 31. The actions to be performed under this Agreement are
7 necessary to protect the public health, welfare, or the
8 environment, and are in the public interest.

9 VIII. AGREEMENT

10 32. The Port agrees that it shall continue to remain
11 responsible for the cleanup and/or remediation of any Historic
12 Contamination to the extent provided in the Settlement Agreement
13 and the Implementing Agreement after the Settlement Properties
14 subject to this Agreement have been conveyed to the United States
15 in trust for the Tribe. The Port agrees that it will be liable
16 jointly and severally to the United States as an owner or operator
17 under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) with
18 regard to Historic Contamination on each such Settlement Property.
19 With regards to the Inner Hylebos and Upper Hylebos properties, the
20 Port agrees that it shall be responsible for undertaking any
21 remedial action involving Historic Contamination of marine
22 sediments specified by EPA as necessary to implement the CB/NT ROD.

23 33. The Port shall meet the following conditions, comply with
24 the institutional controls described in the Findings of Fact of
25 this Agreement, take the following precautions when undertaking

1 actions pursuant to the Implementing Agreement, and retain the
2 following obligations for each of the Settlement Properties subject
3 to this Agreement:

4 a. Inner Hylebos Property.

5 i. Upland Soils. As described in Paragraph 18(c) of
6 this Agreement, a conditional point of compliance for residual TPH-
7 contaminated soil has been established in the Project Area in the
8 northern portion of the peninsula at the Inner Hylebos Property
9 (see Figures 3 and 4 of the Completion Report dated February 7,
10 1992). During any future ground-intrusive development or
11 construction activities by the Tribe or the Port in the Project
12 Area below a depth of 3 feet that generate waste soil or water, the
13 Port will collect and test the waste soil and water to identify
14 whether materials are contaminated. The Port will ensure that any
15 contaminated materials handled or disposed of by the Port or its
16 Contractors are handled and disposed in accordance with applicable
17 federal, tribal, and state laws and regulations. The Port agrees
18 to submit a Work Plan for approval by EPA prior to its conduct of
19 any work below a depth of 3 feet within the Project Area.

20 ii. Marine Sediments. Marine sediment data for the
21 Inner Hylebos Property suggest that the contaminated sediments will
22 naturally recover to comply with the sediment quality objectives of
23 the ROD. The Port shall remain liable for the Historic
24 Contamination in these marine sediments, and shall be responsible
25 for conducting additional investigations of the marine sediments

1 and evaluating the success of natural recovery through sediment
2 monitoring, as may be required by EPA under CERCLA. If natural
3 recovery, as defined by the ROD, is not successful, the Port agrees
4 that it retains the obligation to perform active sediment
5 remediation under CERCLA for Historic Contamination of marine
6 sediments in the Inner Hylebos Property, as may be required by EPA
7 under CERCLA, which may include conducting additional
8 investigations of the marine sediments during sediment remedial
9 design and sediment remedial action activities.

10 b. Upper Hylebos Property. As described in Paragraph 19(d)
11 of this Agreement, marine sediment data for the Upper Hylebos
12 Property suggest that sediments are contaminated and that active
13 sediment remediation will be required under CERCLA pursuant to the
14 ROD. The Port agrees that it retains the obligation to perform
15 active sediment remediation under CERCLA for Historic Contamination
16 of marine sediments in the Upper Hylebos Property, as may be
17 required by EPA under CERCLA, which includes conducting additional
18 investigations of the marine sediments during sediment remedial
19 design and sediment remedial action activities.

20 c. East-West Road Property. As described in Paragraphs 21(b)
21 and (c) of this Agreement, Historic Contamination exists at this
22 property in the form of chemical concentrations in groundwater that
23 exceed state and federal standards. Data suggest that the
24 Occidental Chemical Corporation sludges, which are buried at the
25 adjacent property owned by Bonneville Power Administration, are the

1 source of chlorinated organic compounds to the groundwater at the
2 East-West Road Property. During any Tribe or Port ground-intrusive
3 development or construction activities at the East-West Road
4 Property that generate waste groundwater, the Port shall collect
5 and test the waste water to identify whether such materials are
6 contaminated. The Port shall ensure that any contaminated
7 materials handled and disposed of by the Port and its Contractors
8 are handled and disposed in accordance with applicable federal,
9 tribal, and state laws and regulations. The Port will be required
10 to evaluate development or construction activities at the East-West
11 Road Property for which the Tribe gives notice to the Port to
12 ensure that such activities, including but not limited to building
13 structures, are designed to protect inhalation of volatile organic
14 compounds by future onsite workers. The Port agrees to submit a
15 Work Plan to EPA for approval prior to the Port's conduct of any
16 activities, as described in this Paragraph and related to the
17 institutional controls at the East-West Road Property.

18 34. The Port shall be responsible for monitoring, testing or
19 other ongoing or future requirements regarding Historic
20 Contamination on, in, under, or about a Settlement Property subject
21 to this Agreement to the extent provided for in the Settlement
22 Agreement and the Implementing Agreement. The Port agrees to
23 comply with the terms of the Implementing Agreement and to keep EPA
24 informed of activities undertaken pursuant to the Implementing
25 Agreement by taking the following measures. All notices or reports

1 to be provided by the Port to EPA under this Agreement shall also
2 be provided by the Port to the Tribe.

3 a. The Port shall provide to EPA copies of any notice by the
4 Puyallup Tribe to the Port pursuant to the Implementing Agreement,
5 including but not limited to copies of Exhibits B and C of the
6 Implementing Agreement, which are submitted by the Tribe to the
7 Port.

8 b. Upon being notified by the Tribe of a discovery of a
9 release or the threat of a release of hazardous substances on any
10 of the Settlement Properties subject to this Agreement that may
11 pose a threat to human health or the environment, the Port shall
12 notify EPA within 5 calendar days of receiving the notification
13 from the Tribe. To the extent known, the written notification
14 shall include property name, the identification and location of the
15 hazardous substance(s), circumstances of the release and the
16 discovery, including but not limited to sampling results, any
17 potential imminent and substantial threat to human health and the
18 environment, justifications for decisions pertaining to site
19 activities, notification on whether the release is suspected to
20 involve Historic Contamination, and any remedial actions planned,
21 completed, or underway. Compliance with this paragraph shall not
22 relieve any party of any notification requirements of an applicable
23 federal, tribal or state law or regulation.

24 c. Within 60 days of the Port notifying EPA of its discovery
25 of a release, the Port shall consult with the Tribe and submit to

1 EPA a written report that shall describe the nature of the release
2 and include complete documentation for all items listed in
3 Paragraph 34(b) of this Agreement. The written report shall also
4 identify whether the Port and/or Tribe have any remedial actions
5 planned. Such a determination shall include comparisons to
6 applicable state, tribal, and federal criteria to be used as
7 screening criteria.

8 d. Within 90 days of the Port completing any necessary
9 cleanup actions, the Port shall submit a Completion Report to EPA
10 describing the cleanup action at the property. The Completion
11 Report shall include cleanup actions and compliance monitoring
12 planned or underway.

13 e. If the cleanup action undertaken by the Port is completed
14 within 90 days of the Port notifying EPA of the discovery of the
15 release, a single written report may be submitted to EPA on both
16 the release and the action taken. The report shall contain all
17 information in Paragraph 34(b) of this Agreement and shall be
18 submitted within 60 days of completion of the cleanup action.

19 35. The Port agrees to incorporate EPA comments into the work
20 performed and reports prepared on the Settlement Properties subject
21 to this Agreement. EPA may require further evaluation or
22 additional reports on work performed, and EPA may require the Port
23 to perform additional work as necessary to be protective of human
24 health and the environment and to comply with applicable federal,
25 tribal or state laws and regulations.

1 36. For each report submitted pursuant to this Agreement, a
2 responsible official representing the Port shall certify the
3 information contained in the report is true, accurate and complete.
4 The following certification shall be signed by a responsible
5 official on behalf of Port:

6 "In accordance with 28 U.S.C. § 1746, I certify under penalty of
7 perjury under the laws of the United States that the information
8 contained in and accompanying this certification is true, accurate,
9 and complete. As to (the) (those) identified portion(s) of this
10 (submission) (document) for which I cannot personally verify (its)
11 (their) truth and accuracy, I certify as the responsible official
12 having supervisory responsibility for the person(s) who, acting
13 under my direct instructions made the verification, that this
14 information is true, accurate, and complete. Dated this ___ day of
15 , 199_."

16 37. The absence of express EPA comment, approval or disapproval
17 of any submission within any specified time period shall not be
18 construed as approval by EPA.

19 38. The Port shall, prior to its shipment of hazardous
20 substances from the Settlement Properties subject to this Agreement
21 to an out-of-state waste management facility, submit written
22 notification, as set forth below, to the appropriate state
23 environmental official in the receiving state, and to the EPA
24 Project Coordinator. Notification shall include: 1) the name and
25 location of the receiving facility; (2) the type and quantity of
26 hazardous substances to be shipped; (3) the expected shipment
27 schedule; and (4) the mode of transportation. The Port shall
28 submit written notification of any changes in the shipment plan as
set forth in the notification. Notification of the selection of

1 the receiving facility and state shall be made at least thirty (30)
2 days before any hazardous substances are actually shipped.

3 39. The activities performed by the Port under an EPA
4 administrative order pursuant to this Agreement will be consistent
5 with the NCP.

6 IX. ACCESS

7 40. During the period of the Port's ownership of a Settlement
8 Property, EPA and its designated representatives shall have full
9 access to, and authority to freely move about the property where
10 work is to be carried out pursuant to this Agreement, for purposes
11 of inspecting conditions, activities in implementing the
12 requirements of this Agreement, records, operating logs, and
13 contracts related to that property or the Port or its contractor
14 pursuant to this Agreement; reviewing the progress of the Port in
15 carrying out the terms of this Consent Agreement; conducting tests
16 as EPA or its authorized representatives or designees deem
17 necessary; using a camera, sound recording device or other
18 documentary type equipment; and verifying the data submitted to EPA
19 by the Port. The Port shall allow these persons to inspect and
20 copy all records, files, photographs, documents, sampling and
21 monitoring data, and other writings related to work undertaken in
22 carrying out this Agreement. Copies of all other information or
23 records created, maintained or received by Port or its agents,
24 employees, accountants, contractors or consultants which is in any
25 way related to the implementation of this Agreement, including:

1 contractual documents, invoices, receipts, work orders, disposal
2 records, and any other records or documents not previously required
3 herein shall promptly be made available to EPA on request as soon
4 as practicable, but in any event within thirty (30) days of Port's
5 receipt of EPA's request. Nothing herein shall be interpreted as
6 limiting or affecting EPA's right of entry or inspection authority
7 under federal law.

8 41. The Port may assert a claim of business confidentiality
9 covering part or all of the information submitted to EPA pursuant
10 to this Agreement in accordance with Section 104(e)(7) of CERCLA,
11 42 U.S.C. § 9604(e)(7), and 40 C.F.R. Part 2, Subpart B. This
12 claim shall be asserted in the manner described by 40 C.F.R.
13 2.203(b), and substantiated when made. If no such claim
14 accompanies the information when it is submitted to EPA, it may be
15 made available to the public by EPA without further notice to the
16 Port. The Port may not assert any confidentiality claim with
17 respect to any data related to conditions, sampling, or monitoring
18 at the Settlement Properties subject to this Agreement.

19 42. If the Settlement Property subject to this Agreement, or
20 the off-site area that is to be used for access or is within the
21 scope of the work to be performed, is owned in whole or in part by
22 parties other than the Port, the Port shall obtain, or use its best
23 efforts to obtain, written site access agreement(s) from the
24 present owner(s) as deemed necessary by EPA. Such agreement(s)
25 shall provide access for EPA, its contractors and oversight

1 officials, and the Port and its authorized representatives, and
2 shall specify that the Port is not EPA's representative with
3 respect to any liability associated with activities required by
4 this Agreement. Copies of all such agreements shall be provided to
5 EPA prior to the initiation of any field activities. The Port's
6 best efforts shall, if necessary, include providing reasonable
7 compensation to any property owner for access. If the Port is
8 unable to obtain access agreements with the time referenced above,
9 the Port shall immediately notify EPA of its failure to obtain
10 access.

11 X. RETENTION OF RECORDS

12 43. The Port shall preserve, for a minimum of six (6) years
13 after termination of this Agreement, all records and documents in
14 possession or control of its divisions, employees, agents,
15 accountants, contractors, or attorneys which relate in any way to
16 activities conducted under this Agreement, despite any document
17 retention policy to the contrary. Upon request by EPA, the Port
18 shall make available to EPA such records or true copies of any such
19 records. At the time of such EPA request, and subject to Section
20 XV, infra, the Port may withhold records or documents only by
21 asserting, with sufficient justification, that such records or
22 documents are legally privileged.

23 XI. DESIGNATED PROJECT COORDINATORS

24 44. Documents including reports, approvals, disapprovals, and
25 other correspondence which must be submitted under this Agreement,

1 shall be sent by certified mail, return receipt requested, to the
2 following addressees or to any other addressees which Port and EPA
3 designate in writing. One copy of documents to be submitted to EPA
4 shall be forwarded to:

5 Karen L. Keeley, HW-113
6 U.S. EPA, Region 10
7 1200 Sixth Avenue
8 Seattle, WA 98101

9 45. EPA's Project Coordinator, who is Karen L. Keeley, shall
10 have the authority lawfully vested in a Remedial Project Manager
11 ("RPM") and On-Scene Coordinator ("OSC") by the NCP, and shall have
12 the authority specified and indicated in the National Contingency
13 Plan, 40 CFR Part 300. Nothing in this Agreement shall be
14 construed to diminish that authority. If EPA's Project Coordinator
15 determines that conditions at the site may present an immediate and
16 significant risk to public health or welfare or the environment,
17 EPA's Project Coordinator may take any actions to abate such risks
18 as specified in the National Contingency Plan, including ordering
19 cessation of work, conducting any task required by this Agreement,
20 and taking any appropriate response action. The EPA Project
21 Coordinator may authorize minor field deviations, which shall be
22 documented in writing and signed by both the Ports' Project
23 Coordinator and the EPA Project Coordinator within five (5) working
24 days of such authorization.

1 46. The Port's Project Coordinator is:

2 Leslie Sacha
3 Environmental Director
4 Port of Tacoma
P.O. Box 1837
Tacoma, WA 98401-1837

5 47. EPA and the Port may change their respective Project
6 Coordinators by notifying the other party, in writing, no later
7 than 5 calendar days before the date of such change.

8 XII. QUALITY ASSURANCE

9 48. Throughout all sample collection, transportation, and
10 analysis activities, the Port shall use procedures for quality
11 assurance, quality control, and chain-of-custody in complete
12 accordance with procedures followed by EPA and consistent with EPA
13 guidelines.

14 XIII. OTHER APPLICABLE LAWS

15 49. All actions required to be taken pursuant to this
16 Agreement shall be performed in accordance with the requirements of
17 all applicable local, tribal, state and federal laws and
18 regulations. 42 U.S.C. § 121(d). State, federal and tribal
19 requirements which are applicable or relevant and appropriate shall
20 be included and detailed in Port's work as performed under this
21 Agreement. Off-site disposal of hazardous substances, if
22 necessary, shall comply with the EPA Off-Site Response Action
23 Policy dated May 6, 1985, 50 Fed. Reg. 45933 (November 5, 1985) as
24 amended by EPA's November 13, 1987 "Revised Procedures for Planning
25 and Implementing Off-Site Response Actions," Section 3004(d)(3) of

1 the Resource Conservation and Recovery Act, 42 U.S.C. § 6924(d)(3),
2 and Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), as
3 amended.

4 XIV. OTHER CLAIMS

5 50. In entering into this Agreement, the Port waives any right
6 to seek reimbursement from the Hazardous Waste Trust Fund under
7 Section 106(b) of CERCLA. Respondent also waives any right to
8 present such claims under Sections 111 or 112 of CERCLA. This
9 Agreement does not pre-authorize or constitute any decision on pre-
10 authorization of funds under 42 U.S.C. § 9611(a)(2). The Port
11 further waives all other statutory and common law claims against
12 EPA, including, but not limited to, contribution and counterclaims,
13 relating to or arising out of the matters covered by this
14 Agreement.

15 51. Nothing in this Agreement shall constitute or be construed
16 as a release from any claim, cause of action, or demand in law or
17 equity against any person, firm, partnership, corporation, or state
18 or local governmental entity not a signatory to this Agreement for
19 any liability it may have arising out of, or relating in any way
20 to, the generation, storage, treatment, handling, transportation,
21 release, or disposal of any hazardous substances, hazardous wastes,
22 pollutants, or contaminants found at, taken to, or taken from, the
23 properties subject to this Agreement. In addition, notwithstanding
24 any other provision of this Agreement, EPA reserves the right to
25 assert all claims or causes of action against the Port or any other

1 persons or entities with respect to the conditions at the CB/NT
2 Site or with respect to performing the response actions required by
3 this Agreement. EPA reserves the right to conduct any other
4 additional investigations and response activities at the CB/NT
5 Site, and further retains all rights against third parties with
6 respect to the conditions at the CB/NT Site.

7 52. Nothing in this Agreement shall limit the right of the Port
8 to assert claims for contribution at any time against other
9 potentially responsible parties. The Port specifically reserves
10 the right to recover response and oversight costs from other
11 potentially responsible parties.

12 53. In the event that activities implementing this Agreement,
13 an emergency situation, or release or threat of release not
14 addressed in this Agreement is or may be creating an imminent and
15 substantial endangerment to the public health, welfare, or the
16 environment, EPA may take whatever additional action may be
17 necessary to prevent or abate the endangerment.

18 54. Respondent shall not seek to recover any costs or attorneys
19 fees from EPA or the United States with regard to any matter
20 connected with implementation of this Order.

21 XV. EXONERATION/INDEMNIFICATION

22 55. To the extent permitted by law, the Port shall save and
23 hold harmless the United States, its agencies, officers, employees,
24 and agents (thereby exonerating the foregoing) from, and shall
25 indemnify each of the foregoing against and for, any and all claims

1 arising from or on account of acts or omissions of the Port, its
2 officers, employees, receivers, trustees, agents, or assigns of the
3 Port relating in any way to carrying out activities pursuant to
4 this Agreement.

5 56. The Port shall not, however, be required to indemnify or
6 save and hold harmless the United States, its agencies, officers,
7 agents, or employees from any claims or causes of action arising
8 from, or on account of, acts or omissions of the United States, or
9 its agencies, officers, agents, or employees in carrying out
10 activities pursuant to this Agreement.

11 XVI. REIMBURSEMENT OF RESPONSE COSTS

12 57. Within 30 days of the effective date of this Agreement, the
13 Port shall pay to the United States \$26,083.35, in the form of a
14 certified check or checks made payable to "EPA Hazardous Substance
15 Superfund," and referencing CERCLA Number 1092-06-01-104/106, in
16 reimbursement of Past Response Costs. The Port shall forward the
17 certified check(s) to:

18 U.S. Environmental Protection Agency
19 EPA Region 10 Superfund Accounting
20 P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

21 Copies of the transmittal letter and check should be sent
22 simultaneously to EPA as specified in Section XI.

23 XVII. EFFECTIVE DATE

24 58. This Agreement becomes effective on the date it is signed
25 by the parties.

1 XVIII. SUBSEQUENT MODIFICATIONS

2 59. This Agreement may be amended by agreement of the parties.
3 Amendments shall be in writing, and signed by the parties.

4 XIX. COMPUTATION OF TIME AND FORMS OF NOTICES

5 60. Any time period scheduled to begin on the occurrence of an
6 act or event shall begin on the day after the act or event.

7 61. If the final day of any time period falls on a weekend or
8 legal holiday, the time period shall be extended to the next
9 working day.

10 62. Unless otherwise specified, all notifications shall be sent
11 by certified mail, return receipt requested.

12 XX. SATISFACTION OF ORDER AND TERMINATION

13 63. The duties of the Port under this Agreement shall be
14 satisfied upon a Consent Decree being entered by the U.S. District
15 Court for the Western District of Washington which covers the
16 matters addressed in this Agreement.

1 It is so agreed:

2
3 U.S. ENVIRONMENTAL PROTECTION AGENCY

4
5 Philip G. Millam, Chief
6 Superfund Branch
7 U.S. EPA, Region 10

7/7/92
DATE

8
9 PORT OF TACOMA

10
11 NED SHERA
12 PRESIDENT OF PORT OF TACOMA COMMISSIONERS

7/2/92
DATE

FINAL

IMPLEMENTING AGREEMENT
between the
PORT OF TACOMA
and the
PUYALLUP TRIBE OF INDIANS

1. Parties and Purpose. This Implementing Agreement between the PORT OF TACOMA ("Port") and the PUYALLUP TRIBE OF INDIANS ("Tribe"), and approved by the Secretary of the Interior pursuant to 25 U.S.C. 81, is made to set forth the manner, and the conditions for the conveyance of the six (6) parcels of land owned by the Port to be conveyed to the United States in trust for the Tribe pursuant to the Puyallup Settlement Agreement ("Settlement Agreement"), the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41) ("Settlement Act") and the March 24, 1990 Supplemental Agreement between the Port and the Tribe ("Supplemental Agreement"). The effective date of this Implementing Agreement shall be determined in the manner provided by §12 below.

2. Delayed Settlement Properties. The Settlement Agreement requires that title to certain lands owned by the Port be conveyed to the United States in trust for the Tribe by March, 1993. Pursuant to the Supplemental Agreement, the deeds to the following lands have been placed in escrow and are to be conveyed to the Tribe under the Settlement Act, 25 USC §1773b(c). These lands (hereinafter collectively referred to as the "Delayed Settlement Properties") as defined by the Record of Survey include the following:

2.1 The Blair Waterway property, comprised of 43.61 acres;

2.2 The Blair Backup property, comprised of 85.18 acres;

2.3 The Inner Hylebos property, comprised of 72.61 acres;

2.4 The Upper Hylebos property, comprised of 5.86 acres;

2.5 The Taylor Way property, comprised of 5.77 acres;
and

2.6 The East-West Road property, comprised of 1.82 acres.

3. Property Transfer and Addenda. The Supplemental Agreement describes the mechanism for transferring title to the Delayed Settlement Properties from escrow to the United States in trust for the Tribe. This Implementing Agreement addresses a number of matters of mutual interest to the parties under the Settlement Agreement and facilitates the transfer of the Delayed Settlement Properties.

3.1 The Parties intend to prepare and execute an addendum for each of the Delayed Settlement Properties which shall set forth specific conditions applicable to the transfer of that specific Delayed Settlement Property.

3.2 This Implementing Agreement shall only be applicable to those Delayed Settlement Properties which are also subject to a specific addendum.

3.3 Each such addendum shall be an amendment to this Implementing Agreement as provided by Section 14.1 below. Except as explicitly modified in this Implementing Agreement, the terms of the Settlement Agreement and the Supplemental Agreement shall remain in full force and effect.

4. Responsibility for Historic Contamination. Notwithstanding the Port's transfer of Delayed Settlement Properties to the United States in trust for the Tribe, and in accordance with the Settlement Agreement and Technical Documents incorporated therein, the Port shall continue to remain responsible for the cleanup and/or remediation of any contamination including all known or subsequently discovered contamination that remains on, in, under or about any of the Delayed Settlement Properties as of the date that title to such Delayed Settlement Property is conveyed to the United States in trust for the Tribe ("Historic Contamination").

4.1 Monitoring. The Port shall be responsible for all monitoring, testing or other ongoing or future requirements regarding Historic Contamination on, in, under or about a Delayed Settlement Property that either have been or may be in the future imposed by the United States Environmental Protection Agency ("EPA") by means of Administrative Order, Consent Decree or other means. All such requirements imposed by EPA are hereby incorporated into this Implementing Agreement and shall be enforceable as terms and conditions of this Implementing Agreement.

5. Indemnification. The hold harmless, indemnification, and defense provisions contained in section C(11)(g) of Technical Document No. 1 shall as of the date of transfer of a Delayed Settlement Property to the United States in trust for the Tribe

extend to all Parties in Privity with the Tribe concerning the use, financing, control, management, construction, development, operation, cleanup, or any related activity on, in, under or about any of the Delayed Settlement Properties.

5.1 Parties in Privity with the Tribe. The phrase "Parties in Privity with the Tribe" shall mean parties who: (a) did not cause or contribute to the pre-transfer release of Historic Contamination; and (b) have a derivative interest founded on or growing out of contract, connection, involvement, or mutuality of interest with the Tribe with regard to one or more of the Delayed Settlement Properties. Parties in Privity with the Tribe shall include but not be limited to the following categories of Parties who meet the above criteria of 5.1(a) and 5.1(b):

5.1.1 Successors, assigns, lessees, lenders, partners, contractors, subcontractors, investors, mortgagees of the Tribe with regard to (or otherwise engaged in activities upon) one or more of the Delayed Settlement Properties;

5.1.2 Parties holding legal, contractual, or equitable interests in one or more of the Delayed Settlement Properties;

5.1.3 Parties who, due to the presence of Historic Contamination on, in, under or about one or more of the Delayed Settlement Properties, may be considered to be an owner or operator or otherwise be deemed a liable party with regard to one or more of the Delayed Settlement Properties as defined in either CERCLA (42 U.S.C. §9601 et seq.) or MTCA (Chapter 70.105D RCW) as amended or other applicable contamination laws.

5.2 Recording Indemnification. The Port shall execute a document for each of the Delayed Settlement Properties entitled the "Memorandum of Port of Tacoma Indemnification for Historic Contamination Liability Pursuant to Settlement Act." This document shall provide notice of the Port's indemnification of Parties in Privity with the Tribe pursuant to Section 5 of this Implementing Agreement.

5.2.1 The Tribe shall promptly record this document with the appropriate governmental property title recording agencies.

5.2.2 A copy of this document is attached hereto as Exhibit A and is by this reference incorporated herein.

5.3 Notice of Party in Privity with the Tribe. The Port's obligation under Section 5 of this Implementing Agreement to indemnify Parties in Privity with the Tribe is subject to the Tribe providing the Port with written notice of the identity of the third party which the Tribe has determined to be a Party in Privity with the Tribe.

5.3.1 The Tribe shall provide such written notice to the Port within ninety (90) days of the execution of the contract or agreement establishing the relationship between the Tribe and a third party determined by the Tribe to be a Party in Privity with the Tribe.

5.3.2 The Tribe shall provide such notice to the Port in the form attached as Exhibit B and entitled "Notice to Port of Party in Privity with the Tribe." Exhibit B is by this reference incorporated herein.

5.4 Limitation of Indemnification. The Port's obligation to indemnify Parties in Privity with the Tribe under Section 5 of this Implementing Agreement is limited to liability that arises, or that may in the future arise, due to the presence of Historic Contamination on, in, under or about one or more of the Delayed Settlement Properties and as set forth in Section 5.4.1 below.

5.4.1 Post Transfer Releases. The Port's duty to hold harmless, indemnify and defend Parties in Privity with the Tribe, does not extend to liability that arises as the result of a release of contamination (other than Historic Contamination) on, in, under or about a Delayed Settlement Property subsequent to the date that the Port transfers title to such Delayed Settlement Property to the United States in trust for the Tribe.

5.4.2 Violation of Use Restriction. The Port's duty to hold harmless, indemnify and defend Parties in Privity with the Tribe shall include activities taking place on a Delayed Settlement Property that cause the release of Historic Contamination, but does not extend to liability that arises as the result of a release of Historic Contamination where the Port can show that the activity of the Party in Privity with the Tribe caused the release, and that such activity is in violation of

a restriction on the use of such Delayed Settlement Property imposed by EPA in an Administrative Order on Consent or Consent Decree applicable to the specific Delayed Settlement Property in question.

5.5 Liquidated Damages. The Port's contractual obligation to Parties in Privity with the Tribe as provided for in this Section 5, is limited as set forth in Section C(11)(g) of Technical Document No. 1.

6. Use of Delayed Settlement Properties. The use of Delayed Settlement Properties shall be consistent with paragraph C(12) of Technical Document No. 1, and any applicable EPA Administrative Order on Consent or Consent Decree. Unless the Addendum for a particular Delayed Settlement Property provides otherwise and subject to Section 7 below, use of Delayed Settlement Properties shall prohibit the use of groundwater for drinking water purposes and shall be consistent with those uses allowed within "Industrial Zones M-2 and M-3" of the Tacoma Zoning Code as of the effective date of this Implementing Agreement (hereinafter collectively referred to as "Restricted Uses"). The Tribe's Restricted Uses may be modified to include additional commercial uses, provided that timely notice be given to the Port consistent with Section 8 below.

7. Change in Use of Delayed Settlement Properties. At any time in the future, if the Tribe has a requirement for commercial use consistent with the surrounding uses that is not included in the uses permitted under Section 6 of this Implementing Agreement, or the specific Addendum for that Delayed Settlement Property, the Restricted Uses may be modified to include additional commercial uses; provided that if the modification of the Restricted Uses is determined to permit uses of one or more of the Delayed Settlement Properties, for which it is determined that prior cleanup levels of Historic Contamination on, in, under or about the property are no longer deemed to be protective of human health and the environment, the Port shall promptly undertake additional cost-effective remedial activities as may be necessary and shall do so in a timely fashion so that such new or expanded use of the Delayed Settlement Property can occur. To the maximum extent possible, remedial activities will be undertaken in a manner to minimize disruption of the then current uses of the Delayed Settlement Property.

7.1 Coordination - Future Remedial Activities. Where Restricted Uses of Delayed Settlement Properties are modified, pursuant to Section C(12)(f) of Technical Document No. 1 and Section 7 of this Implementing Agreement, the Tribe will cooperate with the Port and shall incorporate reasonable construction and design requirements in its development plans to minimize the disturbance of Historic Contamination. The

Port will take the lead in undertaking any required remedial activities.

7.2 Limitations on Present/Future Use. Except as specifically provided in Section 6 and Section 7, nothing in this Implementing Agreement shall limit the use of any Delayed Settlement Property by the Tribe or a Party in Privity with the Tribe.

8. Notice of Use and/or Physical Activity on Delayed Settlement Property. The Tribe shall provide the Port with timely written notice of use and/or activities that the Tribe or a Party in Privity with the Tribe plans to undertake on any Delayed Settlement Property and of material changes thereto.

8.1 The purpose of such notice is to facilitate consultation between the Port and the Tribe (and Parties in Privity with the Tribe) and to identify whether steps may need to be taken to avoid potential releases of Historic Contamination and to insure that the activity is consistent with the Restricted Uses set forth in Section 6.

8.2 The Tribe shall provide such notice to the Port by means of a form entitled "Notice of Use and/or Physical Activity." A copy of this form is attached hereto as Exhibit C and is by this reference incorporated herein.

9. Conditional Release of Claim for Economic Loss. Subject to and conditioned upon the Port's satisfactory progress toward the completion of its obligations with regard to a Delayed Settlement Property under both this Implementing Agreement and any applicable Administrative Order, Consent Decree or other document, the Tribe shall refrain from the exercise of any claim for economic loss. Upon the Port's complete and satisfactory performance of its obligations with regard to a Delayed Settlement Property under both this Implementing Agreement and any applicable Administrative Order or Consent Decree, the Tribe shall release the Port from obligations to compensate the Tribe for its economic loss related to that specific Delayed Settlement Property, under Section C(11)(f) of Technical Document No. 1.

10. Notice. Where notice is to be provided pursuant to this Agreement, such notice must be in written form and delivered via messenger service or First Class Mail certified and return receipt requested to:

10.1 Tribe: The Director of Environmental Programs, The Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404, and copy to the Director of Legal Offices,

The Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404.

10.2 Port: Director of Environmental Affairs, Port of Tacoma, P. O. Box 1837, Tacoma, Washington 98401, and copy to the General Counsel, Port of Tacoma, P. O. Box 1837, Tacoma, Washington 98401.

11. Access. The Tribe shall upon written notice provide reasonable access to the Port as may be required by this Agreement or for the purpose of conducting such monitoring, site investigations or further removal or remedial activities as may be required pursuant to Administrative Order or Consent Decree.

12. EPA Authority. Nothing in this Implementing Agreement shall limit the authority of EPA under applicable law.

13. Effective Date. The effective date of this Agreement shall be the date upon which both parties have signed this Agreement and it has been approved by the Department of the Interior.

14. Amendment and Addenda. This Implementing Agreement may be modified by the written concurrence of the Port, the Tribe and the Department of the Interior. When signed by both parties, an addendum as described in Section 3 above, shall be an amendment to this Implementing Agreement upon approval by the Department of the Interior.

15. Execution. By their signatures set forth below the Parties agree to be bound to the terms and conditions set forth above.

January 27, 1992
DATE

March 5, 1992
DATE

PUYALLUP TRIBE OF INDIANS
Margaret Edwards
Chair Puyallup Tribal Council

PORT OF TACOMA
Udell Sherr
President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

IMPLEMENTING AGREEMENT BETWEEN PORT OF
TACOMA AND PUYALLUP INDIAN TRIBE - 7

RADS0302

RAD50392

EXHIBIT A
FINAL

MEMORANDUM OF PORT OF TACOMA
INDEMNIFICATION FOR
HISTORIC CONTAMINATION LIABILITY
PURSUANT TO SETTLEMENT ACT

1. PURPOSE

The purpose of this memorandum is to provide notice of the protection afforded to parties deemed to be in privity with the Puyallup Tribe of Indians ("Tribe") pursuant to federal law, as further implemented by means of an Implementing Agreement entered into between the Tribe and the Port of Tacoma ("Port"). The scope of such protection and the requisite relationship of the parties to the Tribe are described below.

2. BACKGROUND

2.1 The _____ Property described in Exhibit 1 attached hereto (the "Property") is being or has been transferred to the Tribe under the Settlement Agreement authorized by the Puyallup Tribe of Indians Settlement Act, 25 U.S.C. § 1773, et seq. (1991) (collectively the "Settlement"). Section 1773b(b)(2) of the Settlement Act modifies the application of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., with regard to the Property, providing that "[t]he Tribe shall not be liable for the cleanup costs or in any manner for contamination on [the Property] except any contamination caused by the Tribe's activities after conveyance of [the Property] to the Tribe...."

2.2 Under the terms of Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, the Port agreed to "hold the Tribe harmless from, and to indemnify and defend the Tribe against any claim or liability which may be asserted by any private or public party due to the presence of hazardous materials, dangerous waste, or other pollution on [the Property]...." Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement defines the Port's maximum liability to the Tribe under the indemnification provision.

2.3 The Port has entered into an agreement with the Tribe ("Implementing Agreement"). The Implementing Agreement addresses the hold harmless, indemnification and defense provision set forth in Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, subject to certain conditions and limitations. A copy of the Implementing Agreement is attached hereto as Exhibit 2 and is by this reference incorporated herein.

3. INDEMNIFICATION PROVISION

3.1 The hold harmless, indemnification, and defense provisions contained in section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, shall as of the date of transfer of the Property to the United States in trust for the Tribe extend to all Parties in Privity with the Tribe concerning the use, financing, control, management, construction, development, operation, cleanup, or any related activity on, in, under or about the Property.

3.1.1 The phrase "Parties in Privity with the Tribe" shall mean parties who: (a) did not cause or contribute to the pre-transfer release of Historic Contamination; and (b) have a derivative interest founded on or growing out of contract, connection, involvement, or mutuality of interest with the Tribe with regard to the Property.

3.1.2 Parties in Privity with the Tribe shall include but not be limited to the following categories of parties who meet the above criteria of 3.1.1(a) and 3.1.1(b):

(a) Successors, assigns, lessees, lenders, partners, contractors, subcontractors, investors, mortgagees of the Tribe with regard to (or otherwise engaged in activities upon) the Property;

(b) Parties holding legal, contractual, or equitable interests in the Property; and

(c) Parties who, due to the presence of Historic Contamination on, in, under or about the Property, may be considered to be the owner or operator or otherwise be deemed a liable party with regard to the Property as defined in either the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §9601 et seq.) or the Model Toxics Control Act ("MTCA") (Chapter 70.105D RCW) as amended or other applicable contamination laws.

3.2 The Port's obligation to hold harmless, indemnify and defend Parties in Privity with the Tribe is subject to certain

**NOTICE TO PORT OF PARTY
IN PRIVITY WITH THE TRIBE**

DATE: _____

LAND PARCEL (Check one):

- | | | |
|--|---|---|
| <input type="checkbox"/> Inner Hylebos | <input type="checkbox"/> Blair Backup | <input type="checkbox"/> Blair Waterway |
| <input type="checkbox"/> Upper Hylebos | <input type="checkbox"/> East West Road | <input type="checkbox"/> Taylor Way |

ENTITY IN PRIVITY WITH TRIBE:

Name _____

Address _____

Contact Person Name _____

Title _____

Telephone No. _____

TERM OF RELATIONSHIP:
_____ Month/Year _____
StartMonth/Year
_____ End**NATURE OF RELATIONSHIP:****PORT'S MAILING ADDRESS:**

Director, Environmental Affairs Department
Port of Tacoma
P. O. Box 1837
Tacoma, WA 98401

DATE RECEIVED
BY PORT: _____PORT REVIEW
PERSON: _____

PORT COMMENTS:

This notification is made pursuant to Section 5.3.2 of the Implementing Agreement
Dated _____ between the Port of Tacoma and the Puyallup Indian Tribe.

NOTICE OF USE AND/OR PHYSICAL ACTIVITY

DATE: _____

LAND PARCEL (Check one):☐ Inner Hylebos☐ Blair Backup☐ Blair Waterway☐ Upper Hylebos☐ East West Road☐ Taylor Way**DESCRIBE ANY SPECIFIC PROPERTY USE, PHYSICAL ACTIVITIES IMPACTING SOILS, SEDIMENTS OR GROUNDWATER, AND TIMING OF SUCH ACTIVITIES:****TRIBE CONTACT PERSON:** __________
Telephone No.**ENTITY PERFORMING PHYSICAL ACTIVITY:**

Name _____

Address _____

Contact Person Name _____

Telephone No.**ACKNOWLEDGMENT OF RESTRICTED USE:** The performing entity has read and will comply with paragraph 6 of the "Implementing Agreement Between the Port of Tacoma and the Puyallup Indian Tribe", to wit:

6. Use of Delayed Settlement Properties. The use of Delayed Settlement Properties shall be consistent with paragraph C(12) of Technical Document No. 1, and any applicable EPA Administrative Order on Consent or Consent Decree. Unless the Addendum for a particular Delayed Settlement Property provides otherwise and subject to Section 7 below, use of Delayed Settlement Properties shall prohibit the use of groundwater for drinking water purposes and shall be consistent with those uses allowed within "Industrial Zones M-2 and M-3" of the Tacoma Zoning Code as of the effective date of this Implementing Agreement (hereinafter collectively referred to as "Restricted Uses").

By: _____
Its: _____**PORT'S MAILING ADDRESS:**Director, Environmental Affairs Department
Port of Tacoma
P. O. Box 1837
Tacoma, WA 98401

DATE RECEIVED

BY PORT: _____

PORT REVIEW

PERSON: _____

PORT COMMENTS:

This notification is made pursuant to Section 8 of the Implementing Agreement
Dated _____ between the Port of Tacoma and the Puyallup Indian Tribe.

ADDENDUM NO. 1
INNER HYLEBOS PROPERTY

1. Inner Hylebos Property. The Final Investigation Report for the Inner Hylebos Property (Landau and Assoc., January __, 1992) concludes that the chemical constituents of concern in and about the soils are below residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, chapter 70.105D RCW and do not require remedial action. The Final Investigation Report concludes that the site is appropriate for commercial and industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the findings and conclusions of the Inner Hylebos Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial or industrial use except that for any excavation below three (3) feet of the surface on the spit portion of the Property, identified in the map attached hereto, use of groundwater for drinking water purposes shall be prohibited.

3. Marine Sediments. Certain areas of marine sediments within the Inner Hylebos Property were identified as potential problem areas in EPA's Commencement Bay/Nearshore Tideflats Record of Decision. These areas are not currently designated for active remediation, but for natural recovery. However, if natural recovery is not successful, active remediation may be required.

4. Tribal Dredging. The Port and the Tribe recognize that development of the Inner Hylebos Property may require certain areas to be dredged. Except as provided in this Addendum No. 1, the Tribe will be responsible for the cost of such dredging.

5. Sediment Testing. If PSDDA standards for open water disposal are likely to be exceeded because of the presence of Historic Contamination, then the Port and the Tribe shall each pay fifty percent (50%) of any chemical and/or biological testing required.

6. Dredged Disposal. In the event that the presence of Historic Contamination precludes the disposal of dredged materials in or at an open water site, the Tribe shall contribute toward the costs of such disposal a base amount per cubic yard of dredged materials. This base amount to be paid by the Tribe shall be equal to the then prevailing cost of disposal of a cubic yard of

uncontaminated dredged materials at an open water site. All costs associated with disposal over the base amount contributed by the Tribe shall be borne solely by the Port. The Port's obligation under this Section 6 is conditioned upon the Tribe first taking the following two steps:

6.1 The Tribe shall, in accordance with Section 8 of the foregoing Implementing Agreement, effective March __, 1992, notify the Port in writing, of the Tribe's intention to conduct dredging activity at, on or under the Inner Hylebos Property; and,

6.2 The Tribe shall submit an application for an Army Corps of Engineers Section 404 dredge or fill permit to conduct dredging at, on or under the Inner Hylebos Property.

7. Port Disposal Site. In conjunction with other projects of the Port, the Port shall use its best efforts to permit a nearshore site for disposal of the Tribe's contaminated dredged materials associated with the Inner Hylebos Property. The Port and the Tribe shall cooperate in good faith to coordinate their respective activity with regard to the Port's permitting of a nearshore contaminated dredged materials disposal site to accommodate the Tribe's dredging and development of the Inner Hylebos Property. Subsequent to transfer of the Inner Hylebos Property, the Port's obligation to the Tribe under Section 6 above with respect to the Tribe's use of a specific disposal site for contaminated dredged materials shall expire with regard to that specific disposal site, 365 days after the date that the Tribe receives written notice from the Port of the availability of such nearshore disposal site.

8. Port Funding. The Port's financial obligation under section 6 of this Addendum No. 1, with regard to the dredging acceptance and disposal of contaminated materials from the Inner Hylebos Property for disposal at an available disposal site shall not exceed a total cost of \$2.30 per square foot of surface area to be dredged.

9. Dickman Dump. Large quantities of bark have been removed from the intertidal area surrounding the bulkhead in an area known as the Dickman Dump. The Tribe will manage any further bark removal and will secure any necessary approvals from appropriate agencies, including, but not limited to, the U.S. Army Corps of Engineers. Upon the Parties' execution of this Addendum No. 1, the Port shall make periodic payments upon receipt of invoice, by the Tribe or its agents, up to a total amount of \$85,000 toward costs associated with the planning, design and removal of bark and any necessary backfill activity of the Bark Removal area.

10. Port Mitigation Measures. Subsection B(1)(a)(11) of Technical Document No. 4 to the Settlement Agreement allows the Port to create certain inter-tidal habitat within the Inner Hylebos property. The Parties agree that the Tribe may, at its option, provide the Port with written notice that the Tribe has elected to have the habitat mitigation described in that subsection provided for at other Tribal property. This substitution by the Tribe is subject to the approval of the Port, which approval shall not be unreasonably withheld. The Tribe may make this election so long as there is no difference in the Port's cost of creating the habitat and as long as the Port receives equivalent mitigation and/or enhancement credit.

11. Best Management Practices. The Tribe will implement best management practices at its marina with particular emphasis on in-water boat repair and maintenance activities, to prevent the potential for sediment contamination from marina activities.

12. Execution. By their signatures set forth below the Parties agree to be bound by the terms and conditions set out in this Addendum No. 1, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

PUYALLUP INDIAN TRIBE


Chair, Puyallup Tribal Council

PORT OF TACOMA


President, Port Commission


DATE

March 5, 1992
DATE

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

FINAL

ADDENDUM NO. 2

TAYLOR WAY PROPERTY

1. Taylor Way Property. The Final Investigation Report (Hart Crowser, October 15, 1991) concludes constituents of interest in soils are below MTCA residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW and do not require remedial action. A potential exists for Historic Contamination at this site to include offsite migration of volatile organics through the groundwater from the nearby BPA site to the Taylor Way Site due to disposal of waste lime sludge at the BPA site, although no volatile organic compounds were detected in Taylor Way groundwater samples. The Final Investigation Report concludes the site is appropriate for commercial and industrial uses. EPA, the Department of Ecology, and the Puyallup Tribe of Indians have concurred with the findings and conclusions of the Taylor Way Property Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of this property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial and industrial use of the property related to Historic Contamination, except that groundwater at the site shall not be used for drinking water purposes.

February 27, 1992
DATE

PUYALLUP TRIBE OF INDIANS

Margaret Edwards
Chair, Puyallup Tribal Council

March 5, 1992
DATE

PORT OF TACOMA

Alfred Shum
President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

ADDENDUM NO. 3

EAST WEST ROAD PROPERTY

1. East West Road Property. The Final Investigation Report (Hart Crowser, August 27, 1991) concludes constituents of interest in soils are below MTCA residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW, and do not require remedial action. A risk assessment was conducted to evaluate impacts of groundwater contamination and the potential exposure via inhalation of volatile organics originating from the groundwater. Historic Contamination at this site includes offsite migration of volatile organics through the groundwater from the nearby BPA site to the East West Road Property due to the disposal of waste lime sludge at the BPA site. Historic Contamination at this site, including volatile organic compounds detected in East West Road groundwater samples, require the use restrictions set forth in paragraph 2 below. The Final Investigation Report concludes that with institutional controls the site is appropriate for industrial and commercial use. The Environmental Protection Agency, the Department of Ecology, and the Puyallup Tribe of Indians have concurred with the findings and conclusions of the East West Property Site Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of this property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial or industrial use of the property related to Historic Contamination, except that: (1) groundwater at the site shall not be used for drinking water purposes; (2) if required, groundwater disposal plan shall be prepared with regard to potential dewatering during construction; (3) appropriate worker protection shall be employed during ground intrusive construction activities; and (4) vapor barriers, gravel drains, venting or other appropriate measures shall be incorporated into design and construction of all structures with permeable floors built on this site.

3-5-92

DATE

THE PUYALLUP TRIBE OF INDIANS

Marquett Edwards
Chair, Puyallup Tribal Council

THE PORT OF TACOMA

Phil Shum
President, Port Commission3-5-92

DATE

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

ADDENDUM NO. 4

UPPER HYLEBOS PROPERTY

1. Upper Hylebos Property. The Final Investigation Report (Landau & Assoc., May 10, 1991) concludes that the chemical constituents of concern in and about the soils are below residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW and do not require remedial action. The Final Investigation Report concludes that the site is appropriate for commercial and industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the findings and conclusions of the Upper Hylebos Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial and industrial use of the upland portion of the property related to Historic Contamination, except that groundwater at the site shall not be use for drinking water purposes.

3. Marine Sediments. Certain marine sediments on the property may require remediation pursuant to the Commencement Bay/Nearshore Tideflats Record of Decision ("CB/NT ROD"). The most cost-effective approach with regard to marine sediments is to evaluate the cleanup alternatives and remedial design of the cleanup undertaken under the CB/NT ROD for the Head of the Hylebos Problem Area.

4. Tribal Dredging. The Port and Tribe recognize that, in addition to meeting the requirements of the CB/NT ROD, the configuration of the area to be dredged must meet the Tribe's development plan for the site. Such plan will be communicated to the Port, in writing, by January 1, 1994. The parties also recognize that certain areas of marine sediments at the property may need to be dredged by the Tribe for development, if sediment dredging is not required to comply with the CB/NT ROD. In such a case, the dredging will be conducted in accordance with the provisions of sections 4, 5, 6 and 7 of this Addendum No. 4.

5. Sediment Testing. If PSDDA standards for open water disposal are likely to be exceeded because of the presence of Historic Contamination, then the Port and the Tribe shall each pay fifty percent (50%) of any chemical and/or biological testing required.

6. Dredged Disposal. In the event that the presence of Historic Contamination precludes the disposal of dredged materials in or at an open water site, the Tribe shall contribute toward the costs of such disposal a base amount per cubic yard of dredged materials. This base amount to be paid by the Tribe shall be equal to the then prevailing cost of disposal of a cubic yard of uncontaminated dredged materials at an open water site. All costs associated with disposal over the base amount con-

tributed by the Tribe shall be borne solely by the Port. The Port's obligation under this subsection is conditioned upon the Tribe first taking the following two steps.

6.1 The Tribe shall in accordance with Section 8 of the Implementing Agreement, effective March __, 1992, notify the Port in writing of the Tribe's intention to conduct dredging activity at, on or under the Upper Hylebos Property; and,

6.2 The Tribe shall submit an application for an Army Corps of Engineers Section 10/404 dredge and fill permit to conduct dredging at, on or under the Upper Hylebos Property.

7. Port Funding. The Port's financial obligation under Section 5 of this Addendum No. 4, with regard to the dredging acceptance and disposal of contaminated materials from the Upper Hylebos Property for disposal at an available disposal site shall not exceed a total cost of \$3.63 per square foot of surface area to be dredged.

8. Post-Remediation Monitoring. The Port will conduct sediment monitoring of the property subsequent to the remediation conducted as part of the Head of the Hylebos remediation.

9. Piling Removal. The Port will remove and replace up to ten (10) pilings located on the Upper Hylebos Property, if removal of such pilings is required to accommodate the dredge of the property as provided in this Addendum No. 4.

10. Execution. By their signatures set forth below the Parties agree to be bound by the terms and conditions set out in this Addendum No. 4, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

February 27, 1992
DATE

3-5-92
DATE

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

THE PUYALLUP TRIBE OF INDIANS

Margaret Edwards
Chair, Puyallup Tribal Council

THE PORT OF TACOMA

Mike Shum
President, Port Commission

March 8, 1990

MEMORANDUM OF AGREEMENT

AMONG THE PUYALLUP INDIAN TRIBE, THE PORT OF TACOMA, THE WASHINGTON DEPARTMENT OF ECOLOGY AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGARDING THE IMPLEMENTATION OF THE AUGUST 27, 1988 PUYALLUP SETTLEMENT AGREEMENT¹

I. PREAMBLE

The Puyallup Indian Tribe ("Tribe"), the Port of Tacoma ("Port"), the Washington State Department of Ecology ("Ecology"), and the U.S. Environmental Protection Agency ("EPA") recognize that the August 27, 1988 Puyallup Land Settlement Agreement ("Settlement Agreement") provides that the Port will perform cleanup actions on all properties to be transferred from the Port to the Tribe in order to assure that such properties comply with appropriate federal or state contamination law and can be used for commercial and industrial purposes. The parcels to be transferred are identified in the Settlement Agreement's Technical Document #1.

The Settlement Agreement has been incorporated into federal law, the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41), and state law, the Puyallup Tribal Claims Settlement (Ch. 4, Laws of 1989 1st Ex. Sess.). The federal law provides that "contamination audits and cleanup of settlement lands shall be carried out in accordance with the Settlement Agreement and document 1 of the Technical Documents."

The parties agree that in order to provide certainty regarding the compliance with applicable federal and state law, review by EPA and Ecology is appropriate prior to the cleanup plan being developed or cleanup actions undertaken.

The parties acknowledge that the parcels covered by the Settlement Agreement are within the boundaries of the Commencement Bay Nearshore/Tideflats Superfund site and that certain of the parcels are within the problem areas for which a Record of Decision was issued on September 30, 1989.

The parties recognize that the Settlement Agreement sets forth a timetable for such cleanup and that to achieve both the Settlement Agreement's provisions and schedule, a coordinated effort by all parties is required. The parties recognize that it

¹ The Tribe, Port, State of Washington, and the United States are all parties to the Settlement Agreement.

is the intent of the Port and the Tribe to address surface remediation first in an effort to permit the Tribe to utilize the lands for commercial and industrial purposes at the earliest possible date. To further this intent and to do so consistent with the Settlement Agreement, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. 9601 et seq.), ("CERCLA"), and the National Contingency Plan (40 C.F.R. Part 300) ("NCP"), the Tribe and the Port intend to enter into a separate agreement entitled, "Supplemental Agreement Between the Port of Tacoma and the Puyallup Indian Tribe Concerning Agreement Re: Transfer and Use of Certain Settlement Lands."

The purpose of this Memorandum of Agreement ("MOA") is to implement the Settlement Agreement and does not modify, diminish, or alter the rights and entitlements of any party thereunder. This MOA details a process and provides a mechanism by which the parties may develop a cleanup plan that (a) satisfies the requirements of the Settlement Agreement and (b) serves as the basis for cleanup actions under the Settlement Agreement.

II. SCOPE OF AGREEMENT

The parties agree that the following roles, responsibilities, reporting and points of contact shall govern actions taken pursuant to this MOA. The parties further agree to the schedule set out herein for development of Final Cleanup Plans for each of the parcels to be transferred from the Port to the Tribe. The parties understand that Ecology, EPA, and the Tribe may enter into one or more separate agreement(s) for enforcing the cleanup plans referenced below.

III. TERMS OF THE MOA

A. INVESTIGATION OF SITE CONDITIONS

1. The Port, after review by the Tribe, will prepare an Environmental Investigation Workplan for the investigation of each of the parcels to be transferred to the Tribe pursuant to the Settlement Agreement. These Workplans are attached to this Agreement.
2. The Port, with the concurrence of the Tribe, EPA and Ecology will initiate the sampling set forth in the Workplans.
3. No later than April 16, 1990, the Port shall submit a Preliminary Investigation

Report ("Preliminary Report") for each parcel to the Tribe, Ecology and EPA for review. The Preliminary Report will include the sampling data gathered under the Workplans and a preliminary evaluation of site conditions compared to existing numerical criteria standards and relevant cleanup objectives.

4. Within thirty (30) days from receipt of the Preliminary Reports, the Tribe, Ecology and EPA will transmit their comments to the Port.
5. If no new sampling is required, the Port will submit a Draft Final Investigation Report ("Draft Report") to the Tribe, Ecology and EPA within 60 days from receipt of the comments on the Preliminary Report. The Draft Report will include the sampling results and will describe the cleanup objectives for all media, based on ARARs and a health risk assessment as appropriate to evaluate protection of human health and the environment. If additional sampling is required for the Draft Report, such additional samples shall be taken at the earliest possible date and shall be processed/analyzed as soon as practicable in accordance with proper procedure and handling, and the Draft Report will be submitted within thirty (30) days after the Port's receipt of those sampling results.
6. Within thirty (30) days from receipt of the Draft Report, the Tribe, Ecology and EPA will transmit their comments to the Port.
7. The Port will submit a Final Investigation Report ("Final Report") to the Tribe, Ecology and EPA within 30 days from receipt of their comments on the Draft Report.
8. The parties acknowledge that timely action is important, and thus, the time for submittal of the Final Reports on each parcel will be dependent upon the information developed with regard to

each parcel. Accordingly, the Final Report on one or more parcels may be completed, submitted, reviewed and approved prior to those on the remaining parcels.

B. ANALYSIS OF ALTERNATIVES

1. Within sixty (60) days after submission of each Final Report, the Port will submit to the Tribe, Ecology and EPA an Analysis of Alternatives ("Analysis"), which shall discuss remedial alternatives for each parcel that, based on the Investigation Reports, require remediation. The analysis for each parcel shall include an evaluation and discussion of ARARs, an estimation of clean-up costs, the ability of the clean-up plan to attain appropriate cleanup levels for each alternative and any post-clean-up monitoring that may be required. The Analysis for each parcel shall also include a "Recommended Alternative."
2. Within twenty (20) days of their receipt of each of the Analyses, the Tribe, Ecology and EPA shall meet to discuss the Analyses and shall within twenty (20) days thereafter transmit to the Port a joint written statement stating either that the Analysis is acceptable and that they concur with the Recommended Alternative for the specific parcel or parcels ("Statement of Concurrence"), or a written statement outlining the Tribe and the agencies' disagreement with the Analysis, or the Recommended Alternative for the specific parcel or parcels ("Statement of Non-concurrence").
3. If the Port receives a Statement of Non-concurrence with regard to any parcel or parcels, the Port shall request that the parties meet as soon as practicable to resolve the disagreement. Such meeting of the parties shall take place within twenty (20) days of the date that the Statement of Non-concurrence was issued to the Port. After resolution, the

agencies will transmit a joint Statement of Concurrence.

4. The parties acknowledge that timely action is important, and thus, the time for submittal of the Analysis on each parcel will be dependent upon the information relevant to each parcel. Thus, the Analysis on one or more parcels may be completed, submitted, reviewed and approved prior to those on the remaining parcels.

C. CLEANUP PLAN

1. Within ninety (90) days of receipt of the Statement of Concurrence for a parcel, the Port shall submit to the Tribe, Ecology and EPA, a Final Cleanup Plan for such parcel, which incorporates the Recommended Alternative, as modified pursuant to paragraph III.B.3, and a proposed schedule for implementation of said cleanup plans. The proposed schedule shall be subject to review and concurrence by the Tribe, Ecology and EPA.
2. The parties acknowledge that timely action is important, and thus, the time for submittal of the Final Cleanup Plan for each parcel will be dependent upon information relevant to each parcel. Thus, the Final Cleanup Plan for one or more parcels may be completed, submitted, reviewed and approved prior to those on the remaining parcels.

D. CLEANUP

1. Within twenty (20) days of their receipt of each of the Final Cleanup Plans, EPA shall meet with the Tribe and Ecology to discuss each such Final Cleanup Plans and within twenty (20) days thereafter shall issue one or more administrative orders pursuant to CERCLA. Such orders shall provide for implementation of the Final Cleanup Plan for each parcel, along with a schedule for completion. Subject to paragraph III.D.2. below, the provisions of the orders shall be

implemented in accordance with CERCLA and consistent with the NCP.

2. Full and timely compliance with each and every enforcement order issued by EPA pursuant to paragraph III.D.1. is contemplated by the parties to this MOA. To achieve this goal, the Port and the Tribe agree not to appeal or challenge the Final Cleanup Plan for any parcel or parcels after review and concurrence by the Tribe, Ecology and EPA, pursuant to paragraph III.C.2.

E. TARGET DATES

1. The parties acknowledge that the dates set forth in this MOA are target dates which all the parties will use their best efforts to meet. Additionally, the parties recognize that there are factors beyond their reasonable control that may cause these time periods to be shorter or longer than anticipated, including, but not limited to, unanticipated additional sampling, laboratory analysis delays and dispute resolution. The parties understand that even with their best good faith efforts to comply with the time frames set forth herein, one or more of the time frames may be exceeded. It is the parties' intent that so long as the actions of each party are in good faith, a party's failure to meet the time periods set forth in the MOA will not invalidate the other provisions of this MOA.

IV. MECHANISM TO IMPLEMENT THE AGREEMENT

A. PRINCIPAL'S CONTACT

1. For the Port: Leslie Sacha, Director of Environmental Affairs.
2. For the Tribe: Bill Sullivan, Director of Environmental Programs.
3. For EPA: Mike Stoner, Superfund Site Manager.

4. For Ecology: Mike Wilson, Section Supervisor.

B. JOINT ENFORCEMENT

1. The Tribe, EPA and Ecology intend to execute a separate interagency agreement regarding the coordination and cooperative enforcement of this MOA. This interagency agreement will set forth lead agency responsibilities for various tasks. The parties acknowledge that implementation of this MOA and the activities thereunder are undertaken pursuant to the CERCLA. These activities are being conducted pursuant to federal law because the land is being transferred to the United States pursuant to federal statute and the federal act may facilitate a more expeditious cleanup by requiring substantive, but not procedural compliance with federal, state and tribal permits. The parties further agree that cooperative enforcement of this MOA should complement current oversight and enforcement roles as defined in the Record of Decision for the Commencement Bay Nearshore/Tideflats Superfund site, i.e., upland source control by Ecology and marine sediment remediation by EPA.

C. FUNDING OF REVIEW

The Port agrees to fund a special Project Environmental Site Manager ("Site Manager") under an Intergovernmental Position Act Agreement with EPA to facilitate implementation of the Settlement Agreement and this MOA. The Site Manager will report to the EPA Superfund Site Management Section and regularly consult with the Director of Environmental Programs for the Tribe and also will participate as part of the Ecology Commencement Bay Urban Bay Action Team.

V. EFFECTIVE DATE

A. The effective date for this MOA is the date on which the signatures of all parties have been obtained.

THE PARTIES have executed this MOA on the date as indicated.

THE PORT OF TACOMA

By: Donald A. Meyer
for John Terpstra
Executive Director

3/9/90
DATE

THE PUYALLUP TRIBE

By: Henry John
Henry John
Chairman, Tribal Council

3-20-90
DATE

THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

By: Terry Husseman
Terry Husseman
Director for Waste Programs

3/13/90
DATE

THE U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X

By: Randall F. Smith
for Charles E. Findley, Director
Hazardous Waste Division

3/21/90
DATE